

Ranka Sahu Vs. State of Orissa

Ranka Sahu Vs. State of Orissa

SooperKanoon Citation : sooperkanoon.com/531992

Court : Orissa

Decided On : Apr-21-1995

Reported in : 1995(II)OLR1

Judge : R.K. Dash, J.

Acts : [Probation of Offenders Act, 1958](#); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360 and 361

Appeal No. : Criminal Revision No. 633 of 1993

Appellant : Ranka Sahu

Respondent : State of Orissa

Advocate for Def. : C. Kasturi, Addl. Standing Counsel

Advocate for Pet/Ap. : D.C. Swain, Adv. for D. Panda, Adv.

Disposition : Petition allowed

Judgement :

R.K. Dash, J.

1. The accused, appellant herein, faced trial in G.R. Case No. 449 of 1983, under Sections 323 and 324, IPC. Upon hearing, the learned Subdivisional Judicial Magistrate, Chatrapur, found him guilty under both the sections and consequently

convicted and sentenced him to pay a fine of Rs. 250/-, in default to undergo simple imprisonment for two months, for the offence under Section 323, IPC and rigorous imprisonment for one year for the offence under Section 324, IPC. On appeal, the Second Additional Sessions Judge, Berhampur, confirmed the conviction and sentence recorded by the trial Court. Feeling aggrieved, the accused has come up to this Court by filing the present revision.

2. Shortly stated; the prosecution case is that on 11-8-1983 at about 7 a.m. informant Jura Mohanty (PW 1) had been to irrigate his land which adjoins the land of the accused. Seeing him, the accused who was present there, hurled abuses at him in filthy language, asking as to why he opened the water Channel and so saying he dealt a spade blow on his head causing bleeding injury. It is the further case of the prosecution that the accused also gave blows on the waist, back and thigh of the informant with wooden handle of the spade. Soon after the occurrence the informant approached the local police and lodged FIR Ext. 1 whereupon a case was registered, investigation was taken up, in course of which the informant was sent for medical examination and on close of investigation, charge-sheet was laid against the accused to stand his trial under Sections 323, 324 and 294, IPC.

3. The defence plea was one of denial and false implication.

4. Charge was framed under Sections 323 and 324, IPC. and to bring home the said charge prosecution examined seven witnesses including the doctor. Learned trial Court mainly relying upon the evidence of the informant PW 1 and PW 2, the alleged eye-witnesses to the occurrence, coupled with the medical evidence of PW 5, convicted and sentenced the accused as hereinbefore stated. Upon appeal, the learned Second Additional Sessions Judge declined to interfere with the lower Court's findings and consequently dismissed the appeal.

5. Mr. D.C. Swain, learned counsel for the petitioner vehemently challenged the evidence of PW 2 contending, inter alia, that no implicit reliance can be placed on his testimony, since he was admittedly examined by the Police 4 to 5 days after the occurrence and no explanation was offered by the prosecution for his evidence; inasmuch as in his earlier statement to the Police he did not state about

the accused assaulting informant on his head and buttock with the sharp side and handle portion of the spade respectively. Further, prosecution having withheld the Investigating Officer from the witness box, serious prejudice has been caused to the accused, the reason being that he could not get opportunity to cross-examine him to bring out the material contradictions in the evidence of PW2. Learned counsel further submitted that there was discrepancy in the evidence of PWs 1 and 2 with regard to the seat of assault which fact was lost sight of by both the Courts below while appreciating their evidence. It was lastly submitted that even assuming the prosecution case to be true, the beneficial provision of the Probation of Offenders Act should have been extended to the accused keeping in view the genesis and origin of the incident as well as the nature of injuries.

6. Mrs. C. Kasturi, learned Additional Standing Counsel for the State, on the other hand, supported the findings of the Courts below and urged that the same having been based on proper appreciation of evidence, should not be disturbed.

7. Jura Mohanty (PW 1), the victim of assault, in his evidence has stated that on 11-8-1983 at about 7 a.m. the accused assaulted him with sharp side of the spade on his head and with wooden handle of the spade on his waist, back and thigh. This incident according to him, had been witnessed by Dasa Sabat, Jogi Sabat and Hari Gauda. Of all these witnesses, prosecution examined Nari Gauda (PW 2) and Jogi Sabat (PW3). Jogi Sabat (PW3) however, did not support the prosecution case. Then remains the sole witness PW 2 who although corroborated PW1 so far as assault on the head is concerned, but with regard to other injuries his evidence is somewhat discrepant. According to him, accused gave two blows with the handle of the spade on the buttock of PW 4, whereas PW 1's own version is that he was assaulted on his waist, back and thigh. Added to it, it was suggested to PW 2 during cross-examination, which of course he denied, that in his earlier statement to the Police he had not stated about the material part of the prosecution case regarding assault to PW 1 on his head and buttock. This material omission could have been brought in evidence had the Investigating Officer been examined. So non-examination of the investigating Officer, in the circumstances, is a serious infirmity resulting in prejudice to the accused. Further, PW 1 was admittedly examined 4 to 5 days after the occurrence and the prosecution did not

offer any explanation for his delayed examination. Taking all these facts and circumstances into consideration, it would be difficult to accept and act upon the evidence of PW 2.

Coming to the evidence of PW 1, he being the victim of assault and his evidence having not been corroborated by any other witness, I am not inclined to rely upon his testimony to uphold the conviction recorded against the accused.

8. Next question arises for consideration is as to whether both the Courts below having held the accused guilty of charge, should have extended, benefit of the provisions of the Probation of Offenders Act. The learned trial Court declined to give such benefit observing that the object of awarding punishment is to prevent the accused as well as to deter others from committing crime. This view of the Magistrate was approved by the learned appellate Court.

9. In the early days the principle that 'an eye' 'for an eye' 'a tooth for a tooth' was followed as a measure of punishment. Later came the deterrent and preventive theories of punishment, the object of which being to prevent the person from repeating the crime as also to deter others from committing the similar crime. Lot of criticism was levelled against this aspect of criminal justice system. In the words of Bernard Shaw, 'If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and men are not improved by injuries'. Then came the modern' reformatory theory of punishment which has assumed importance. According to social reformers, a revolutionary change can be brought about in the character of most of the offenders by sympathetic and humanistic treatment, because of the fact that no one is born as a criminal. This led for bringing the Probation of Offenders Act into statute book. The intention of the Legislature in enacting this beneficial legislation is to give a chance to the offenders involved in trivial offences to reform themselves. In this context I am reminded of what Supreme Court have observed in the case of Ratan Lal v. State of Punjab: AIR 1965 SC 444, where their Lordships observed :

The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of recognition of doctrine that the object of criminal law is more to reform the individual offender than to punish him.'

10. Keeping in view the objects and reasons of the Probation of Offenders Act, a similar provision has been made in Section 360 of the Code of Criminal Procedure, 1973 for release of an offender on probation of good conduct. The intention of the Legislature being to extend the said benefits to offender, a specific provision has, therefore, been made in Section 361, Cr PC to the effect that where the Court could have dealt with the offender under Section 360 or under provisions of the Probation of Offenders Act or with a youthful offender under the Children Act or any other law for the time being in force, but had not done so, it shall record special reason in the judgment for not having done so.

11. In the present case the learned trial Court followed the deterrent theory of punishment and therefore, declined to extend the benefit of the Probation of Offenders Act to the accused. This view of his was also approved by the appellate Court. In my opinion, the approach of both the Courts below is quite contrary to the provisions of the Probation of Offenders Act. Perfunctory manner of discharging the sentencing function by the Courts has been deprecated by the Supreme Court in *Ved Prakash v. State of Haryana*, AIR 1981 SC 643. It would be useful to reproduce the observation made in the said judgment as under:

'...We must emphasise that sentencing an accused person is a sensitive exercise of discretion and, not a routine or mechanical prescription acting on hunch. The trial Court should have collected materials necessary to help award a just punishment in the circumstances. The social background and the personal factors of the crime-doer are very relevant although in practice Criminal Courts have hardly paid attention to the social milieu or the personal circumstances of the offender. Even if Section 360, Cr PC is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant. The absence of such materials in the present case has left us with little assistance even from the counsel. Indeed, members of the Bar also not pay sufficient attention to these legislative provisions which relate to dealing with an offender in such manner that he becomes a non-offender. We emphasise this because the legislations which relate to amelioration in punishment have been regarded as 'Minor Acts' and, therefore, of little consequence. This is a totally wrong approach and even if the Bar does not help,

the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of Offenders Act. ...'

12. Keeping in view the legislative intention coupled with dictum of the Apex Court referred to supra, it is hoped that the Criminal Courts instead of discharging their sentencing function in a mechanical manner, should assign special reasons if they decline to extend the benefits of the provisions of the Probation of Offenders Act to the accused.

13. Upshot of the aforesaid discussion is that the order of conviction and sentence passed by the trial Court and confirmed by the appellate Court is liable to be set aside and the same is accordingly set aside.

The revision is, thus, allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com